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No. 87-731.

In the
Supreme Court of the United States.

OCTOBER TERM, 1987.

GLOBE NEWSPAPER COMPANY AND
DAVID FARRELL,
PETITIONERS,

v.

EDWARD J. KING,
RESPONDENT.

Respondent Edward J. King's Response in Opposition to Motion for Leave to File Brief Amici Curiae and Brief Amici Curiae of American Newspaper Publishers Association, American Society of Newspaper Editors, Society of Professional Journalists, Sigma Delta Chi, and Reporters Committee for Freedom of the Press in Support of Petition for Certiorari.

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5 pp

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The respondent Edward J. King respectfully responds in opposition to the Motion for Leave to File Brief Amici Curiae herein received Monday, December 21, 1987, for the following reasons:

As set forth in Respondent's Brief pp. 9-23, the Decision and Judgment below are *not* based on a failure by petitioner Farrell, the petitioner Globe's columnist to investigate "Hearsay Evidence" but on traditional rules of Constitutional Malice in libel cases.

The petitioners, as well as the amici curiae, who also never discuss the real point, have tried to escalate a "non-issue" into grounds for *certiorari*, particularly by repeatedly stating that the Supreme Judicial Court (SJC) was unanimous (and obviously in a most casual manner):

> In ruling for the first time that an inference of malice may be drawn from a failure to investigate beyond a credible source, the SJC has imposed a negligence standard in the State of Massachusetts in public official libel cases.

(Amici Curiae Brief, p. 5.)

The amici curiae thus repeat the words "failure to investigate beyond a credible source" (*Ibid.*) and ignore that Farrell had "obvious reasons" to doubt the accuracy of Crane's "report", *. . . that the report to Crane was as likely to have been fabrication or speculation as to have been the truth* (Pet. App. A at 18(a); 400 Mass. at 722).

This is because Farrell never once, under all the circumstances below, asked Crane "where did you hear that unprecedented *report*?" or, "From whom?" As the SJC found and ruled:

> 1. That Farrell knew that in thirty-five years as an experienced journalist, he never heard of a similar occurrence, which indeed, he would regard as a "serious" matter.
>
> 2. "It would be reasonable to infer from the deposition testimony that Farrell, an experienced journalist, published as a fact that the plaintiff had engaged in conduct which, if known, would discredit him in the eyes of a considerable and respectable segment of the community, that Farrell knew that his statement was likely to have

that effect, and that he knew that the conduct, if it had occurred, would have been highly unusual."

3. That Farrell knew Crane was relying on hearsay, perhaps multi-level.

4. That when Crane spoke to Farrell and at the time of Crane's testimony, Crane did not in fact know his informant's identity.

5. That Farrell never asked Crane who was his informant (and indeed never asked any questions at all) in the face-to-face conversations when Crane "revealed" his story to Farrell, and not merely on one occasion but "maybe twice" (see Respondent's Brief in Opposition to Petition, p. 4).

6. That Crane never told him who was the informant.

7. That Farrell never asked the judge to verify the information.

8. That Farrell never asked anyone else to do so. (Pet. App. A at 17a-18a; 400 Mass. at 721-722.) (Emphasis supplied.)

Of course *if* Farrell *had* asked the almost automatic question referred to, Crane's answer would necessarily have been that Crane did not know where he heard the recent report, or from whom, or whether it was man or woman, *and that in fact at all relevant times Crane did not know the identity of his informant* (Pet. App. A at 17a; 400 Mass. at 721).

Indeed as stated by Crane in his deposition (J.A. II at 531):

> Q I'll move to strike that at the appropriate time (the stenographer reads back the following question: "*Throughout the entire period, right up to the present time,* you don't remember the source or sources; Right?")

A Right.
Q Now, when you met with Mr. Kociubes, did Mr. Kociubes ask you what the basis of your information was?
A No.
Q He never asked you the basis of the information that you gave to Mr. Farrell, what that basis was?
A No.
Q You didn't tell him?
A No.

(Emphasis supplied.)

Other issues raised in the Brief Amicae Curiae are answered in Respondent's Brief in Opposition to the Petition for Certiorari.

Conclusion.

WHEREFORE, since the motion to file a Brief and the Brief Amicae Curiae are based on non-issues in this case, respondent files this Opposition.

Respectfully submitted,

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